

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION, et al.,
Plaintiff,

VS.

NO. CV-22-00222 JB/KK

Hector Balderas, Attorney General
for the State of New Mexico, et al.,
Defendants.

VOLUME 2

ZOOM HEARING

Transcript of Motion for Preliminary Injunction
Proceedings before The Honorable James O. Browning,
United States District Judge, Albuquerque, Bernalillo
County, New Mexico, commencing on June 15, 2022.

For the Plaintiff: Mr. Eddie Greim; Mr. Matt Miller;
Mr. Carter Harrison

For the Defendant: Ms. Olga Serafimova; Mr. Dylan
Lange

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EXHIBIT

P10

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1 organization.

2 Q. Can a democratic candidate as part of a
3 Democratic Party organization, or is that a separate
4 entity that has to separately pay for the
5 information?

6 A. I think, if it's within the party that
7 they're sharing it, that is still within the
8 organization. So any party could share it within
9 their party.

10 Q. Okay, including with candidates?

11 A. Correct.

12 Q. And candidate campaigns?

13 A. Correct.

14 Q. Okay. What about a party sharing it with
15 volunteers, who are not employees or contractors;
16 they just answered an ad, and show up one day, and,
17 you know, go door to door, would the volunteer --
18 could they share the data with the volunteers?

19 A. Again, you know, I think that our analysis
20 has reached the level of within the organization. So
21 if we had factual based scenarios, and it needed to
22 be reviewed by an attorney, that would be something
23 that I would check in with the attorney.

24 What I feel confident in stating is that
25 within the organization is not going to be viewed as

1 an unlawful sharing of the information.

2 Q. Okay. So the answer on the volunteers is
3 you'd have to check with an attorney?

4 A. Correct.

5 Q. Go ahead.

6 A. I'm good. Thank you.

7 Q. And so, presumably, people, regular
8 citizens who want to comply with these, also probably
9 have to talk to an attorney as well to understand how
10 to comply with this?

11 A. I think anyone can talk to an attorney if
12 they feel the need to. I don't think that is what I
13 just stated. I think I -- our office has an
14 obligation to make sure we're following the statute
15 in all cases. So if there is ever an area where I
16 need clarity, I will seek guidance from an attorney.

17 Q. Let's go back to your next -- the other
18 issue. We talked about Otero County earlier. It
19 sounds like there is an exception for a canvasser to
20 discuss someone's information with the voter
21 themselves. That's how the Secretary of State would
22 view it; correct?

23 A. I think that there is not a statutory
24 exception, Mr. Greim. And I think that we are not,
25 you know, going to be witnessing every instance of

1 somebody having a conversation. So, in particular, I
2 don't think we would take an action against someone
3 having a conversation with a voter.

4 Q. Okay. What about if an individual has a
5 conversation with a voter about that person's spouse
6 or other members of the household, does that
7 exception still apply?

8 A. Again, I said there is no legal exception
9 in the statute for sharing the data.

10 Q. Right. You're just saying you wouldn't
11 refer it for criminal prosecution?

12 A. In the one specific scenario.

13 Q. Okay. Now, I'm asking you about a new
14 scenario. What about other members of the household?

15 A. And, again, when we are reviewing
16 somebody's use of voter data, it's going to be
17 factually based. So I think we would need to get all
18 of the information, and I, alone, would not make that
19 decision. And up to this point, we have not had to
20 do that analysis.

21 Q. Okay. So the answer is that the Secretary
22 of State's Office just can't tell us the answer right
23 now?

24 MS. SERAFIMOVA: Objection, Your Honor.
25 That misstates her testimony.

1 THE COURT: Well, she can answer the
2 question. So overruled.

3 A. I don't think there is any difference in
4 the scenario you're describing, in that, yes, I would
5 seek guidance from my general counsel.

6 Q. Okay. Let me ask you now about an academic
7 paper that's exploring the way the election was run.
8 So one academic pays for the data, and writes a
9 paper, does a statistical analysis. Then another
10 academic at a rival university, maybe, I don't know
11 New Mexico versus New Mexico State, another political
12 science professor says: I don't agree with your
13 conclusions; you know, I want to write a review of
14 your article. Can I see the data? Okay? So is it a
15 crime -- would you criminally refer the first
16 academic who shared the data with the second academic
17 who is trying to verify his conclusions?

18 A. So, again, I think anyone who wants to
19 receive data, we've established that there is a
20 statutory process in which they need to complete an
21 affidavit. In signing that affidavit, they are
22 agreeing to specific statutory terms that are defined
23 in Article 5. And so anyone that has statutorily
24 received that data needs to comply. And so, in that
25 case, a separate individual, a separate entity would

1 need to also comply with receiving the data.

2 Q. Okay. So the answer is it would be a
3 criminal referral, then, for the first academic to
4 share the data with the second academic?

5 A. Again, if somebody is going outside of the
6 bounds of law, we have an obligation to consistently
7 apply that law. And if we felt that they were
8 unlawfully using the data, we would refer it for a
9 review of a law enforcement agency.

10 Q. Okay. I only have a few more. We could go
11 on for quite a while, but I won't go on forever,
12 okay.

13 Let's say a voter, like the Plaintiff Holly
14 Steinberg here, goes and buys the entire file; hires
15 programmers so she can use the data; runs her own
16 analysis. And then she calls VRF and says: Well,
17 here's what I found. Now, VRF also has the data,
18 okay? But Holly Steinberg shares the data that she
19 has with VRF as part of that discussion. Is that a
20 criminal violation?

21 A. I think my answer will be the same, if
22 you'd like me to restate it. The data can be shared
23 within the same organization. Otherwise, individuals
24 need to obtain that data directly. And again, we've
25 established in prior conversation that that data is

1 dynamic. It is always changing, being updated. So
2 it is very unlikely that those two entities would
3 have the same exact data at a point in time.

4 Q. What if they did have the exact same data
5 set; they both downloaded them on April 13th at 4:50,
6 is it a crime for one to share the data with the
7 other?

8 A. There doesn't seem to be a need to share
9 the same exact data, so I'm not clear as to how that
10 would be a real life scenario. But my position
11 statutorily would not change.

12 Q. The need would be checking to make sure
13 they have the same data. They find that they did.
14 Would the sharing, though, if one still shared with
15 the other, so it's still a crime; correct?

16 A. I think that my answer has not changed.

17 Q. Okay. Finally, what about a company that
18 buys the data, creates a database, and makes it
19 available to political clients for a fee, is that a
20 crime?

21 A. I think that's definitely something that
22 appears to be sharing the data unlawfully. If it's
23 outside of their organization, that is still the
24 issue.

25 Q. Now, we've mentioned the company Catalist

1 Q. Okay. Very good. And so at the very top
2 you see that someone named Patrick Rostock is sending
3 you an email, copying Sharon Pino; right?

4 A. Right.

5 Q. Mr. Rostock says, "Hi Mandy and Sharon.
6 Per Dylan's contact with the AG, we are not
7 fulfilling records requests from VoteRef." Did I
8 read that right?

9 A. You did.

10 Q. Okay. And at this point this was a pending
11 records request from VoteRef, wasn't there?

12 A. No, there was not.

13 Q. Okay. And I think I know why you're saying
14 that.

15 Let's scroll on down. So at the very
16 bottom you'll see, on February 15, 2022, 4:06 p.m.
17 someone at data -- at VoterReferenceFoundation.com
18 wrote, "Dear Election Official, please provide us
19 with a total count by county precinct of any
20 registered voters who cast a ballot in the November
21 3, 2020" -- left out the word "election" -- who have
22 been subsequently placed in an inactive, canceled,
23 deleted, removed, or any registration status other
24 than active, or any voter that has been removed or
25 deleted from the voter rolls between November 3, 2020

1 and April 13, 2021." Did I read that right?

2 A. You did.

3 Q. Okay. And April 13, 2021, by the way, is
4 the date of the last data set that VRF had gotten
5 from the Secretary of State's Office; right?

6 A. They have not received any data from our
7 office directly.

8 Q. Okay. Fair enough. That's the data that
9 Local Labs received the data set that had been
10 provided to VRF; correct?

11 A. I don't have that exact date, but that
12 sounds reasonable.

13 Q. Okay. And so this request was then
14 assigned to Patrick Rostock; correct?

15 A. This is a Help Desk Ticket that, yes, was
16 assigned to Patrick.

17 Q. Who is Patrick?

18 A. He is a new staff member. He's a
19 paralegal, and serves as the records custodian.

20 Q. Okay. So Patrick Rostock got this ticket
21 the following day, on February 16th; right?

22 A. Yes.

23 Q. So then, it looks like March 10th, several
24 weeks later, after having heard nothing back, VRF
25 asked again, "Good afternoon, can you please provide

1 a status report. Thank you." And that goes to
2 Mr. Rostock; correct?

3 A. Yes.

4 Q. All right. And then Mr. Rostock, the
5 following day, forwards this ticket on to you; right?

6 A. He sent us an email.

7 Q. So let me ask you this: When someone
8 emails your office, do you typically ignore them
9 altogether unless they happen to have an affidavit
10 already filled out and attached to their request?

11 A. I don't think there is a goal to ignore
12 someone who communicates with our office.

13 Q. Okay. Why was Voter Reference Foundation
14 ignored here?

15 A. In this case, you know, Patrick, in working
16 with our general counsel, there was a determination
17 that this was neither a public -- a formal public
18 records request nor a normal voter data request. At
19 this point in time, we had already engaged with the
20 law enforcement agency, and so we did seek their
21 guidance. And at this point in time, it was
22 determined that we were not going to provide data.

23 Q. Why not?

24 A. Because we had already referred their use
25 of the data to a law enforcement agency.

1 Q. Okay. So is there a part of the statute
2 that says that if you referred someone for
3 prosecution, you don't answer their requests anymore?

4 A. There is not a statutory provision that
5 requires us to respond in this case. And there is
6 not a statutory provision that says you should not
7 respond. That was a decision made based on the
8 information we had.

9 Q. Okay. So why would having referred them to
10 the AG -- and by the way, the AG had not actually
11 charged them at this point; correct?

12 A. There is no charge that I have an awareness
13 of.

14 Q. So why did the AG tell you not to respond?

15 A. I can't speak to that. I don't know.

16 Q. Who does know?

17 A. The Attorney General, I'm sure.

18 Q. Well, who is the contact -- who did the
19 Attorney General speak to in your office?

20 A. Typically, it goes to our general counsel.

21 Q. So do you know whether there was
22 anything -- let me ask you this: Why not just
23 respond to VRF and say that you need to submit an
24 authorization, here's a link to the form?

25 A. It just was determined that we were not

1 going to be providing data at that point in time
2 based on knowledge that it had already been published
3 on a website.

4 Q. So you say, "based on knowledge it had
5 already been published." So you're assuming that
6 this data would be published, you're just assuming
7 that; right?

8 A. I think that there is currently an
9 investigation taking place, in particular, about this
10 entity. And so we did seek guidance on how to handle
11 this request in particular. And we were provided the
12 guidance, as it is stated in the email, that we were
13 not to provide the data.

14 Q. And you had no knowledge that this data was
15 going to be published, did you?

16 A. Not at that point in time, that data had
17 not been received.

18 Q. Okay. And you have no knowledge today that
19 this data was going to be published; correct?

20 A. If you're referring to the most recent
21 request from VoteRef --

22 Q. No, I'm referring to this request.

23 A. So this request does not provide any more
24 information than you've read to the Court.

25 Q. And no one reached out to VRF to find out

1 whether they were going to publish it or not; right?

2 A. No.

3 Q. The answer was just to ignore them; right?

4 A. To not provide data.

5 Q. Okay. So we'll have to ask the AG why they

6 made this recommendation, and we'll have to ask

7 someone else at the Secretary of State to understand

8 why they accepted this advice; correct?

9 A. Correct.

10 Q. Let me now ask you about the most recent
11 request that you started to talk about. So about 19
12 days ago you received a notice and a request from our
13 office on behalf of VRF; correct?

14 A. Correct.

15 Q. Okay. Let's pull that up. Sorry, I
16 can't -- I'm trying to reduce the size of this so it
17 makes sense to us.

18 So this is what we marked as Exhibit P10.

19 Do you recognize this?

20 A. I do.

21 Q. I'm sorry, was the answer yes?

22 A. Yes.

23 Q. Okay. And by the way --

24 MR. GREIM: Okay, I move to admit P10.

25 THE COURT: Any objection, Ms. Serafimova?

1 So this is legal advice. She doesn't have
2 the level of knowledge or understanding to take those
3 factors into account. And what she's essentially
4 communicating right now in response to Mr. Greim's
5 questions is things that she has heard from her
6 general counsel, from myself, in validating this
7 request. So I hope that --

8 THE COURT: Well, I think Mr. Greim has a
9 right to find out what the Secretary's position is on
10 these issues, you know. I guess, if you want to
11 instruct her not to testify and claim attorney-client
12 privilege, then we can sort of explore that. But,
13 you know, people make decisions all the time, and
14 some of it includes talking to their counsel. So I
15 guess I don't think there is anything objectionable
16 to the question. So overruled.

17 All right. Bring the witness back.

18 All right. Mr. Greim.

19 MR. GREIM: Thank you, Your Honor. I think
20 the witness is still muted. Or is that somebody
21 else?

22 BY MR. GREIM:

23 Q. Ms. Vigil, are you here?

24 A. Yes.

25 Q. All right. So my question with respect to

1 the first piece is: Do you see that we have said we
2 are not going to publish it online unless we are
3 granted relief from this Court or any other legal
4 proceeding. Do you see that?

5 A. That's for the first project, correct.

6 Q. Right. And so -- I mean, let me ask you:
7 Is the Secretary concerned that we will publish the
8 information anyway, you know, in violation of this
9 promise?

10 A. I'm not clear on what the reference to
11 "first project" is. Is that request number one?

12 Q. No, let's go back. Let's go back and be
13 very clear. So we say there are two distinct
14 projects. It's not really request number one. For
15 its first project, just as VRF publishes voter data
16 for many other states, and as it recently published
17 voter data in New Mexico, VRF intends to publish the
18 requested information online for election-related
19 purposes. So the first project is simply to publish
20 the requested information online, to do what we were
21 doing before. Okay? So that's the first project.
22 And we say we'll only do that if VRF is granted
23 relief in this case or any other legal proceeding.
24 Do you see that?

25 A. I do.

1 Q. Okay. And so I don't understand the
2 Secretary's position, as you laid it out, that you
3 are afraid that VRF is going to publish the
4 information online. And so my question to you is:
5 Does the Secretary believe that VRF will break this
6 promise and will publish the information anyway?

7 A. My response has come from guidance and
8 direction from our counsel.

9 Q. Okay. I'll stop there with that. So you,
10 yourself, don't have any information about why the
11 Secretary is claiming that VRF may publish the
12 information anyway?

13 A. I don't think that statement has been made
14 at all, and I certainly have not made that statement.
15 Again, the request has been reviewed, and
16 based on our counsel's analysis, our understanding is
17 that we cannot conspire to publish this information,
18 because it would be against the statute.

19 Q. And the Secretary will maintain that
20 position even if a court orders otherwise; is that
21 correct?

22 A. I think we will follow a court order, as we
23 are required to.

24 Q. Okay. So for the second project, VRF
25 intends to analyze the records and it will publish

1 communication with the Attorney General. We made the
2 referral based on the information that you all have
3 an awareness of. And that is in their hands at this
4 point in time.

5 Q. You haven't withdrawn the referral?

6 A. No.

7 Q. You haven't told the AG's Office that: We
8 actually think there may be some exceptions to the
9 prohibition on sharing?

10 A. There are no exceptions to the prohibition.
11 And no, we have not -- I have not directly engaged
12 with the Attorney General on this referral.

13 MS. SERAFIMOVA: Your Honor, may I just
14 take a moment. You know, when we scheduled this
15 hearing, Mr. Greim said he had 20 minutes left. And
16 we are one hour and a half in. And I have, you know,
17 plenty of questions to go over. So --

18 THE COURT: I'm concerned about it, too. I
19 didn't want to have this hearing today. I think I
20 explained my grandchildren were in town. So I came
21 in today just to do this hearing. And I'm getting
22 concerned about what's going on myself.

23 Let's take a break. I need to give
24 Ms. Bean a break. But I'm concerned about what's
25 taking place myself.

1 during this time?

2 A. Yes.

3 Q. Was there any reason -- did you
4 intentionally not look into Catalist?

5 A. No.

6 Q. Did you think about Catalist at all?

7 A. To be honest, our focus was on all the
8 tasks necessary to administer the election.

9 Q. And you looked at one portion of Catalist's
10 website, right, not the entire website?

11 A. As far as the exhibit, that's the only
12 thing I've seen of their website.

13 Q. Okay. Now, if that exhibit that's P5 --
14 and we don't need to pull it up because I have a
15 hypothetical question -- but if that exhibit
16 contained language to the effect of: You can see the
17 data that we received from the Secretary of State's
18 Office by clicking here, would that give you concern?

19 A. If they were posting the voter data online,
20 yes, that is concerning.

21 Q. Okay. And that would be unequivocally a
22 violation, in your opinion?

23 A. Yes.

24 Q. And if that exhibit said something to the
25 effect: You can buy a copy of the file that we

1 received from the New Mexico Secretary of State's
2 Office by, whatever the process is, would you find
3 that unequivocally to be a violation of the Election
4 Code?

5 A. Yes.

6 Q. And if that exhibit said: We, Catalist,
7 share every file we receive from the New Mexico
8 Secretary of State's Office with I360 because we have
9 the same ideological connection, would that be a
10 violation of the Election Code, in your opinion?

11 A. Yes.

12 Q. Okay. But none of that was on there;
13 right?

14 A. No.

15 Q. And you don't actually know what their
16 product is?

17 A. I do not.

18 Q. And you don't know if the database they
19 mentioned contains information from other sources
20 other than secretaries of state?

21 A. I don't know.

22 Q. You have no idea what that product is?

23 A. I have no idea.

24 Q. Okay. And then you were asked another
25 hypothetical: If one academic uses voter data

1 obtained from your office, and then shares that voter
2 data with another academic, would that be a
3 violation. And your answer was: Yes, it appears
4 that it would be; correct?

5 A. Correct.

6 Q. And that answer is not dependent on the
7 topic of the first academic's paper, is it?

8 A. No. My understanding of that scenario was
9 sharing the actual data, the voter file.

10 Q. And your answer was not dependent on the
11 topic of the second academic's paper?

12 A. I have no idea what those topics are, no.

13 Q. Okay. So the content of those papers is
14 not relevant to you?

15 A. No.

16 Q. And the viewpoint that each hypothetical
17 academic may hold or express in their paper, that's
18 also not of concern to you?

19 A. It is not.

20 Q. Those are completely irrelevant subjects;
21 right?

22 A. Correct.

23 Q. Now, you were asked about sharing and if --
24 and let's say, if VRF discusses the data that they
25 receive from your office, if that would be a

1 data shall not be made available or used for unlawful
2 purposes." Do you see that?

3 A. I do.

4 Q. So would you agree with me that the second
5 sentence under the affidavit is, almost verbatim,
6 quoting from 5.5?

7 A. Right.

8 Q. And then it is -- let me just pull it up
9 again. Okay, here we go. So the first sentence is
10 the one that references 5.6; is that correct?

11 A. You are correct.

12 Q. And then the second sentence references
13 5.5, which has its own mention of use in making
14 available; is that right?

15 A. Yes.

16 Q. All right. Now -- and we just covered
17 this -- you do continue to honor any and all versions
18 of this form that your office receives, as long as
19 they're fully and properly filled out; right?

20 A. That's correct.

21 Q. And, of course, as long as you don't have
22 any actual knowledge that the data will be used
23 unlawfully?

24 A. Right.

25 Q. Is that a fair paraphrase?

1 this, so very briefly you were asked: If a political
2 party requests to use the data on its own behalf as
3 an entity, can that voter data be shared internally.
4 And what is your position?

5 A. Yes.

6 Q. And the same for a company, right, if a
7 company requests on its own behalf, meaning they bear
8 the criminal responsibility of an entity, right, they
9 can share internally, but not externally. Is that
10 your position?

11 A. Yes.

12 Q. But if that political party or hypothetical
13 company goes out to upload the file that they receive
14 from you to the internet, that would be a violation;
15 right?

16 A. Right.

17 Q. And if, let's say, the Republican Party
18 shares with a Libertarian candidate, that would be a
19 violation unequivocally; right?

20 A. Right.

21 Q. And then, of course, you were asked more
22 nuanced questions, and you said you would need to
23 seek legal counsel; right?

24 A. I did.

25 Q. But these are more black and white

1 Q. Sorry, Plaintiffs' Exhibit 10. And let me
2 pull it up real quick. Here we go.

3 Okay. So again, as of today, you have not
4 denied an affidavit that they have submitted; right?

5 A. We have not.

6 Q. You may deny it tomorrow; is that correct?
7 And this is the affidavit.

8 A. We have not, again, taken a final position,
9 but there is a potential, based on the concern of the
10 data being made public, meaning posted online.

11 Q. And we did discuss -- you and I and the
12 other people that you identified -- we did discuss
13 this request in the recent past -- I'm not sure
14 exactly when it was -- right?

15 A. Right.

16 Q. And do you remember that we discussed that
17 some data may be provided and other may be withheld,
18 but we needed to take a look at all the data to make
19 the final decision?

20 A. Correct.

21 Q. And you haven't seen a draft response?
22 Your general counsel is working on that response;
23 correct?

24 A. Correct.

25 Q. You haven't seen that draft response?

1 A. I have not.

2 Q. Okay. So you don't know, and you haven't
3 seen the data that was pulled in response to this
4 Plaintiffs' 10, which is a request, a lengthy
5 request?

6 A. I have not.

7 Q. Okay. And, you know, Mr. Greim asked you,
8 you know, why not just take their promise at face
9 value. I know you're not an attorney. But do you
10 know if this is a legally binding promise of any
11 sort, where they say that they will not upload the
12 data that they receive?

13 A. I'm not an attorney, but this does not
14 appear to be a legally binding document.

15 Q. Okay. So that's just their promise first
16 of all, right?

17 A. Right.

18 Q. And secondly, they state -- I'm sorry, here
19 we go -- they state that they will not upload the
20 data unless they are granted relief in this case or
21 any other legal proceeding; right?

22 A. Right.

23 Q. Okay. So, if the Court grants their motion
24 for preliminary injunction, right, which means allows
25 them to put the data online, then we go and appeal,

1 and an appellate court says: No, that was a mistake,
2 would the harm have been done, meaning if you give
3 them additional information, that would already be
4 online, even though, ultimately, it would have been a
5 mistake; correct?

6 A. Correct.

7 Q. Okay. And with respect to this particular
8 affidavit, which is the first and only that VRF has
9 submitted, and the first and only that your office
10 actually plans on denying, right, you're doing it
11 because I advised you that you would potentially be
12 committing a conspiracy; is that right?

13 A. Correct.

14 Q. So if the request is denied, it will be on
15 my advice not to violate the New Mexico Criminal
16 Code?

17 A. It will be based on the advice, yes, and
18 the fact that we do not want to violate the law.

19 Q. Okay. So would you call this a unique
20 circumstance?

21 A. Absolutely.

22 Q. Okay. I'll move on from the form. I will
23 pull up State's Exhibit 6 and State's Exhibit 7. And
24 we'll start with 6. Here we go.

25 And so I'll represent to you, even though

1 A. I have seen this exhibit.

2 Q. Okay. When did you see -- I know it's an
3 exhibit, but the email itself -- when did you see it
4 for the first time?

5 A. Oh, just in preparation for the case.

6 Q. Okay. So you see that it was sent December
7 14 --

8 A. I do.

9 Q. -- of 2021? You did not see it in that
10 timeframe, it sounds like? Or did you?

11 A. No.

12 Q. Do you know whether or not your office
13 responded to this email?

14 A. I don't believe so.

15 Q. Do you know why it was not responded to?

16 A. Can you make it just a little bit bigger,
17 please?

18 Q. Yes. And tell me if you need me to scroll
19 up or down.

20 A. No. Okay. So I know that we received an
21 inquiry from a media outlet, ProPublica, and that's
22 kind of where this "discrepancy" comment was brought
23 to our attention. So I think they kind of came in
24 simultaneously. And we did look into the data. But
25 I don't believe a formal response to this email, to

1 my knowledge, was sent.

2 Q. Okay. Now, was there an intentional
3 decision made not to respond to this email as far as
4 you know?

5 A. No.

6 Q. It sounds like it was wrapped up with the
7 ProPublica discussion or at least -- you did work
8 with ProPublica; correct?

9 A. We did.

10 Q. So you mentioned the discrepancy, and
11 that's the second full paragraph here. Are you
12 familiar, when I say discrepancy, you know what I
13 mean?

14 A. Yes.

15 Q. So again, according to VoteRef, there is a
16 difference between the reported number of voters who
17 voted on November 3, 2020, and then the number of
18 people that were on the file that you provided in
19 April to Local Labs, with an indication that they had
20 voted in that election; correct?

21 A. Correct.

22 Q. And the second number was smaller by 3,844
23 individuals. Is that your understanding?

24 A. Yes.

25 Q. Okay. So tell me, did you look into this

1 SHARON PINO,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE COURT: All right. Ms. Pino, you may
6 be seated.

7 Mr. Greim, if you wish to conduct direct
8 examination of Ms. Pino, you may do so at this time.

9 BY MR. GREIM:

10 Q. Ms. Pino, what is your title?

11 A. I am Deputy Secretary of State.

12 Q. And what are your duties?

13 A. I, essentially, am also the Chief of Staff,
14 so I run the office, help make any decisions, policy
15 decisions or otherwise, direct projects, oversee all
16 of the directors of the office.

17 Q. Who do you report to?

18 A. I report to Secretary of State Maggie
19 Toulouse Oliver.

20 Q. Who directly reports to you?

21 A. All of the directors directly report to me,
22 which is our director of business services, our
23 elections director, our director of IT, our human
24 relations manager, our general counsel, and our
25 communications director.

1 made to the Attorney General's Office regarding New
2 Mexico Audit Force, and again, their use and
3 manipulating of voter data that -- I don't, to this
4 day, know how they got the voter data -- but it being
5 manipulated and used to spread election
6 misinformation.

7 Q. Okay. And I understand that. But my
8 question to you is about at the time you wrote this
9 letter?

10 A. At the time we wrote the letter, no.

11 Q. Okay. And were you concerned that VRF was
12 about to engage in spreading election misinformation?

13 A. Yes. By placing all of the data on a
14 publicly available website.

15 Q. And so did you believe that the placing of
16 the data on the website constituted misinformation?

17 A. No.

18 Q. Okay. So what was it about putting the
19 data on the website that was going to spread election
20 misinformation?

21 A. It had the potential to.

22 Q. Okay.

23 A. Again, because when you put the data out
24 there, it can be manipulated in any way to do so.

25 Q. Now, you have no information that VRF has

1 ever manipulated its data, do you?

2 A. No.

3 Q. At the time you wrote this letter, you had
4 no reason to believe that VRF was about to manipulate
5 the data, did you?

6 A. Only the potential that it could be
7 manipulated, yes.

8 Q. Right. And I mean, anybody who receives
9 the data can manipulate the data; correct?

10 A. There are strict provisions regarding the
11 use of the data that you legally obtain.

12 Q. But there was nothing particular by VRF
13 that caused you to think that it was about to
14 manipulate the data or spread misinformation?

15 A. I had none of that information at the time.
16 That's why we made the referral to the Attorney
17 General's Office, so they could thoroughly
18 investigate.

19 Q. Now, by the time of this letter, your
20 office had actually already accused VRF of spreading
21 misinformation; correct?

22 A. You'll have to tell me exactly. I don't
23 know specifically what you're referring to.

24 Q. Okay. Well, we'll come back to that. By
25 this point, VRF had stated in a press release that

1 assert: You know, I'm aware of all these provisions
2 legally, and will abide by them in requesting this
3 voter data.

4 Q. Got it. And on the form, at this time, you
5 could actually check either "governmental, election
6 related, or election campaign purposes"; correct?

7 A. I believe so, yes.

8 Q. All right. How was "election related
9 "different from "election campaign purposes"? You've
10 listed them out separately here.

11 A. They're not. I mean, it's essentially the
12 same thing. And when you go to the definitions, I
13 believe -- and I'd have to take a look at the
14 statute -- but there is only the two definitions.
15 There is the election campaign purposes and the
16 governmental purposes. So, in essence, "election
17 related" is election campaign purposes.

18 Q. Now, earlier you told us that you had a
19 factual basis for everything that's put into this
20 letter. Do you recall that?

21 A. Yes.

22 Q. I'm going to ask you, in this last sentence
23 you say, "Providing this personal voter data on a
24 private website that intends to spread misinformation
25 about the 2020 general election." So what

1 A. Again, that wasn't my determination to
2 make. And again, I didn't prepare this. But I'm
3 assuming when these were laid out in the letter by
4 our counsel it was simply to cite all of the
5 provisions of the statute. When we looked
6 specifically at VRF, and when I read this referral
7 and reviewed the referral and signed the referral, it
8 had more to do related to VRF with the unlawful
9 use --

10 Q. Okay.

11 A. -- of the voter data, which is again
12 putting it on a publicly available website where it
13 could be manipulated.

14 Q. Okay, my question is different, okay? My
15 question is: What is it about spreading
16 misinformation about the general election that brings
17 it outside of this first of the three uses here,
18 governmental purpose? Why does that not comport with
19 governmental purpose?

20 A. Again, I think that's misciting -- and can
21 I take a look at the statute, because there is a
22 definition of governmental purpose under the statute.

23 Q. Sure. Yeah, do you have it there in front
24 of you?

25 A. Let me get my book.

1 Q. I, unfortunately, don't have an exhibit
2 that actually has the statutes in there.

3 A. The definition of governmental purposes
4 means "noncommercial purposes relating in any way to
5 the structure, operation, or decision making of a
6 federal, state, or local government." So that is
7 what brings it outside of that definition of
8 government purpose.

9 Q. Is it because it's misinformation?

10 A. It's because it's information. And, again,
11 it does not relate in any way to the structure,
12 operation, or decision making of federal, state, or
13 local government.

14 Q. What is this information that you are
15 concerned about? Was it about the voter rolls not
16 being properly maintained?

17 A. I think, as I've stated, if the data
18 potentially can be manipulated in any way that can be
19 utilized to spread misinformation based on the fact
20 that it's been manipulated.

21 Q. Okay. Let's move to the next one --
22 actually, we'll cover them together, because you've
23 testified that they're really referring to the same
24 thing.

25 A. Um-hum.

1 Q. Okay. How is misinformation about the 2020
2 general election not election or election campaign
3 related?

4 A. Because, again, election campaign, it's
5 essentially the same thing. And that's why election
6 campaign purposes as defined under E, means "relating
7 in any way to a campaign in an election conducted by
8 a federal, state, or local government. So a
9 campaign. Campaign uses, such as: I'm getting this
10 voter data so I can send out information on a
11 candidate or an issue specifically reaching out to
12 voters, it's being used in some way -- or again, to
13 conduct canvassing activities. It's somehow being
14 utilized for the campaign.

15 Q. So is it your position that using the data
16 to talk about the operation of the election itself is
17 not within election related or election campaign
18 purposes?

19 A. I don't think that that's my position at
20 all. That's certainly one interpretation.

21 Q. Okay. Well, I'm just trying to understand
22 why misinformation about the 2020 general election is
23 not election related?

24 A. And I'm not saying that it's not. What I'm
25 saying is what was intended in this letter when we're

1 saying that intends to spread misinformation about
2 the 2020 election, meaning that the data can be
3 manipulated to spread that misinformation.

4 Q. Okay. But the specific sentence, it says,
5 "We do not believe." That includes you; right?

6 A. Yes.

7 Q. You reviewed this before you signed it.
8 You said you were comfortable with the facts, you
9 were comfortable with the legal theories; right?

10 A. Yes.

11 Q. Okay. So I'm sorry, I want to move on from
12 this point, but I want to get an answer to this.
13 Let's just replace "misinformation" with -- you know,
14 let's call it communication of data that you believe
15 has been manipulated, all right? So, first of all,
16 you're telling us that you don't have -- at the time
17 you wrote this letter, you had no information --

18 A. I did not write the letter.

19 Q. So at the time you signed the letter --

20 A. Um-hum.

21 Q. -- right? You had no information that VRF
22 had actually done that; right?

23 A. I personally did not. Like I said, the
24 information in the letter, we had some staff that
25 looked at the website and put together the letter.

1 So, no, I did not personally have any information at
2 the time that -- again, it was -- or VRF had
3 conducted any kind of misinformation or had
4 manipulated the data.

5 Q. Okay. Are you now suggesting that staff
6 did, and you just didn't know about it?

7 A. That may be the case, like I said. But
8 again, if there is a potential to manipulate the data
9 to spread misinformation, that does not fit the
10 statutory definitions of government purpose or
11 election campaign purposes. And that was my
12 understanding when I reviewed and signed the letter.

13 Q. Okay. And you still believe that today;
14 correct?

15 A. I still believe that today.

16 THE COURT: Mr. Greim, we've been going
17 another hour and a half, so I'm going to have to give
18 Ms. Bean a break here. So we'll be in recess for
19 about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. Ms. Pino, I'll
22 remind you you're still under oath.

23 Mr. Greim, if you wish to continue your
24 direct examination of Ms. Pino, you may do so at this
25 time.

1 who they are before then.

2 Q. And that was going to be my next question.
3 When did you first become aware of them? In the
4 context of this case?

5 A. Yes.

6 Q. More specifically, the prior hearing and
7 today; is that right?

8 A. Um-hum.

9 Q. Do you have any knowledge as to what either
10 company's products is?

11 A. I do not.

12 Q. So if you received information that an
13 entity named Catalist, LLC, is uploading New Mexico
14 voter data on its website, would that potentially
15 cause you to refer them to the Attorney General's
16 Office?

17 A. Absolutely.

18 Q. And the same with I360. If you believe you
19 had probable cause to refer them to the Attorney
20 General's Office, would you refer them?

21 A. Yes.

22 Q. And then final topic, from me anyway, is
23 you've shared with me that, as a public servant, a
24 pretty high level public servant, you have taken
25 certain steps to keep your personal information

1 from these claims about harassment. A candidate
2 campaign cannot share with an allied campaign. You
3 heard that.

4 Political firms sharing with clients, you
5 heard a lot of waffling, and really lack of interest
6 in exactly what Catalist is doing. But if they are
7 selling their data, or sharing it under some wrapped
8 fee or something, they're sharing their data with
9 their clients. That's a violation, too. And there
10 are several of these firms that have always been
11 requesting from the state. There has been no effort
12 at all to try to learn more about it.

13 So what the Secretary really wants here,
14 Your Honor, to step back from all these examples, the
15 Secretary wants to be the hub of all this speech that
16 occurs about this data. The Secretary wants everyone
17 else to be a spoke out from the hub. And the
18 Secretary does not want any spokes coming together to
19 share the data and talk about what they have. And
20 it's not just discussion. Discussion quickly ends up
21 requiring that you share the data you actually have.
22 You know, I've got 5,400 discrepancies. Well, I've
23 got 4,200 discrepancies. You have to share that data
24 to understand what you're talking about.

25 THE COURT: Is there any distinction

1 argument to be made that VRF would benefit from Local
2 Labs' conduct being found constitutional, that
3 statute still prohibits commercial use. And I
4 believe Mr. Greim has admitted today that commercial
5 use can be regulated. And so Local Labs --
6 regardless of, you know, whether this Court finds
7 that uploading is governmental use or election use,
8 Local Labs' conduct of selling the data -- and we
9 know they sold it because they paid 5,000 for it, and
10 then they charged 15,000 for it to VRF -- so their
11 conduct would still be a violation and not
12 constitutionally protected, so there would be no
13 change in circumstances there.

14 So, again, if there is no injuring fact, we
15 need Article III standing regardless of the theory.
16 So even in overbreadth cases, we need Article III
17 standing. Plaintiffs cannot show injuring facts with
18 respect to 1-4-5.5, so they don't have a claim that
19 survives there.

20 Now, on a substantive challenge, again, we
21 do -- given our interpretation of 5.5, we do concede
22 that plaintiffs have not violated any of the use
23 restrictions, because those use restrictions do not
24 prohibit uploading the data to a website. That is
25 under 5.6. So that doesn't change our theory. And

1 And like I said, there is no standing on any theory
2 possible. And so there can also not be a void for
3 vagueness or challenge with respect to that statute.

4 So now we're going to move on to 1-4-5.6.

5 And, as you know, Your Honor, our interpretation of
6 that statute is that it incorporates by reference
7 portions of Article 5, relevant portions of Article
8 5. And I'll just mention, yes, the statutes were
9 recompiled in 2011. Since then, there have been
10 numerous amendments, including the fact that, in
11 2015, the legislature put the definitions of
12 governmental purpose and election campaign purpose in
13 1-4-5.5. But they never thought it necessary to take
14 the reference in 1-4-5.6 to the voting registration
15 system as Article 5. That reference has remained
16 consistent.

17 So we cannot assume that the legislature
18 was incompetent, was negligent. We have, again,
19 based on principles of statutory interpretation, we,
20 in fact, have to assume the opposite. They made
21 other amendments, they did not make that change, and
22 that must have been, therefore, intentional.

23 With respect to 1-4-5.6, plaintiffs
24 actually do not challenge that statute and our
25 interpretation of it on its face. We've invited them

1 to. Sharing can mean that plus. What we are focused
2 on, the prohibition of selling, loaning, otherwise
3 providing access to, distributing; those are the
4 statutory terms.

5 And, so I said it before, and there is no
6 evidence to the contrary, discussing the data is not
7 the problem. Analyzing and criticizing it is not the
8 problem. The problem is when you receive a file from
9 the Secretary of State's Office, and then you hand
10 that file over to someone else that is not within
11 your organization, whether in electronic or paper
12 form. That is the problem.

13 So, as we discussed in our briefing,
14 1-4-5.5 is, therefore, completely content and
15 viewpoint neutral. It doesn't matter what's actually
16 in the file. It doesn't matter who obtained the
17 file. It doesn't matter who they're handing it over
18 to. It doesn't matter why they are handing it over
19 to that person, and it also doesn't matter what that
20 other person is going to do with it. So this is a
21 content neutral regulation, statute; custom, I guess,
22 was one other term that was used today.

23 As such, it is subject to a different First
24 Amendment analysis. It is true, we conceded that it
25 is speech. But it is a different kind of speech that

1 conclusions, that's unfortunate. But, again, the
2 only way for 5.6 to be effective is if it prohibits
3 all sharing outside of the regulatory process,
4 because otherwise, it creates a gap that we cannot
5 prosecute, that we cannot control.

6 And also, there was some argument that, you
7 know, voter A could not discuss the data with voter
8 B; every one of them has to pay for it. There is no
9 argument that the fees are unreasonable. So that's
10 not before the Court. So we have to assume the fees
11 are what they are. Plaintiffs are not complaining
12 about the fees. If people have to pay for the data,
13 sobeit. But that's what the New Mexico legislature
14 has decided. But that's not a constitutional factor
15 to invalidate the statute.

16 I think Mr. Greim talked about a
17 content-based referral, that the referral mentions,
18 you know, the three purposes, and therefore, the
19 referral is content based. Obviously, the witness
20 disputes that, the testimony disputes that. The crux
21 of the referral is in the conclusions. But,
22 nevertheless, assuming for the sake of argument that
23 there was a content-based referral, first of all,
24 that's the theory being brought for the first time
25 today.

1 is conspiracy to violate the Election Code.

2 So, you know, there was some suggestion
3 that vast amounts of sharings are not being
4 prosecuted or referred for prosecution. That is
5 simply not true. Again, the witnesses testified they
6 never heard of anybody else. The ones that they have
7 heard about, Catalist and I360, we repeated that
8 many, many times. The election was the priority in
9 the last many months. And no one was worried about
10 Catalist between the last hearing and today. That
11 was just not a priority. So no conclusion should be
12 drawn from that. In fact, Ms. Vigil promised to take
13 a closer look at that. And there is no reason to not
14 believe her on that.

15 And so, again, I think a lot of the
16 so-called evidence of unprosecuted unlawful sharing
17 comes from, with all due respect, Mr. Greim's misuse
18 of the term "sharing." But the witnesses testified
19 it is selling, loaning, otherwise making --
20 distributing, otherwise providing access to. If an
21 organization requests the information, it can be
22 shared internally, as long as the uses remains
23 lawful. But it can never be shared externally.

24 And Mr. Greim mentions the Campaign Finance
25 Act. I know nothing about the Campaign Finance Act.

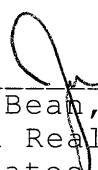
C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on June 18, 2022



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